IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6293 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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HUSEN FAKIR MOHAMMED SALAT

Versus

PC PANDE COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR MIG MANSURI for Petitioner

MR DN PATEL GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition, the detenu has challenged the order of detention dated 9.6.1999 passed by the Commissioner of Police, Ahmedabad City, the respondent No. 1 herein, under the provisions contained in section 3 of the Gujarat Prevention of Anti-Social Activities, Act 1985 (hereinafter referred to as the Act).

2. The detenu was served with the grounds of detention dated 9.6.1999, vide Annexure 'C' to the petition. The grounds disclose that the detenu was indulging in nefarious activities of sale and transportation of illicit liquor. Two cases were registered against the detenu for offences under the Bombay Prohibition Act, and thus, the detenu has been considered as a bootlegger. Apart from the activities of selling and transporting illicit liquor, the detenu was behaving in such a way that it was impossible for citizens to reside in the locality. The grounds also

disclose that on 25.5.1999, when an innocent person was passing in the locality on his scooter, the detenu demand the scooter for transporting liquor, and on denial, he was beaten, as a result of which people collected and the detenu, by showing dangerous weapon, created an atmosphere of terror. Thus the activities of the detenu are found to be dangerous. There are also other instances mentioned in the grounds of detention.

3. In the instant case, it is not necessary to go into the legality of the grounds of detention, but whether the continued detention is bad or illegal is required to be decided. Ground (m) of the petition reads as under:-

> "It is also submitted that the representation dtd 17.7.99 of the detenu has not been expeditiously forwarded by the respondent no. 3 to the respondent no. 1 and 2 and the Advisory Board as well as to the Hon'ble the Chief Minister of Gujarat and even if it is sent by the respondent No.3 to the respondent no.1, then in that case it is the bounden duty of the respondent no. 1 to sent the same with his remarks to the respondent no. 2 and the Hon'ble the Chief Minister. The respondent no. 2 and the office of the Hon'ble the chief minister has not disposed it off expeditiously and delay on the part of the respondents in forwarding as well as in disposing of the representation of the detenu, is unexplained which show that the procedural safeguards as enshrined in the Article 22 of the Constitution of India are not complied with and burden is upon the respondents to see that they have been strictly complied with and therefore the continued detention of the detenu is illegal and unconstitutional and therefore, the detenu required to be released forthwith."

4. It is required to be noted that neither the detaining authority nor the State Government has filed any affidavit controverting the grounds raised in the memo of petition. Even otherwise also, it is the duty of the State to file affidavit when a petition is filed to point out that the detention as also the continued detention is in accordance with law. More care is required to be taken in such type of detention because persons are detained without trial.

5. For the aforesaid reasons, the continued detention of the detenu is held as bad and illegal. The

detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

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